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**Strongsteel of Alabama, LLC and Tony McGinty and  
Eric Bracewell.** Cases 15–CA–189655, 15–CA–  
191573, and 15–CA–194178

February 13, 2019

**DECISION AND ORDER**

BY CHAIRMAN RING AND MEMBERS MCFERRAN  
AND EMANUEL

On June 4, 2018, Administrative Law Judge Robert A. Ringler issued the attached decision. The General Counsel filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,<sup>1</sup> and conclusions and to adopt the recommended Order as modified.<sup>2</sup>

**ORDER**

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Strongsteel of Alabama, LLC, Andalusia, Alabama, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.<sup>3</sup>

1. Substitute the following for paragraph 1(d).

“(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.”

2. Substitute the attached notice for that of the administrative law judge.

Dated, Washington, D.C. February 13, 2019

<sup>1</sup> In the absence of exceptions, we adopt the judge's findings that the Respondent violated Sec. 8(a)(1) by interrogating, threatening with discharge, and discharging employees McGinty and Bracewell for their protected activity of discussing their wages with each other. Also, in the absence of exceptions, we adopt the judge's dismissal of the allegations that the Respondent violated Sec. 8(a)(1) by maintaining its Employee Conduct Policy and orally promulgating a rule banning employees from discussing their wages.

The General Counsel excepts to the judge's failure to find, as an independent violation, that the Respondent unlawfully applied the Employee Conduct Policy to discharge McGinty and Bracewell. We dismiss this exception on procedural grounds, as it was not alleged in the complaint. Rather, the only as-applied allegation in the complaint was that the Respondent discharged McGinty and Bracewell for violating an orally promulgated rule prohibiting employees from discussing their wage rates. The judge found (and we adopt in the absence of exceptions) that the Respondent never orally promulgated such a rule.

John F. Ring, Chairman

Lauren McFerran, Member

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

**APPENDIX**

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

**FEDERAL LAW GIVES YOU THE RIGHT TO**

Form, join, or assist a union  
Choose representatives to bargain with us on your behalf  
Act together with other employees for your benefit and protection  
Choose not to engage in any of these protected activities.

WE WILL NOT ask you about your wage discussions with your coworkers, or about other protected concerted activities.

<sup>2</sup> We deny the General Counsel's exception to the judge's failure to include additional language in the notice as the General Counsel has not demonstrated that the Board's standard notice language should be modified in this case. Specifically, the General Counsel urges the Board to positively affirm in the notice that employees have a right to discuss wages, hours, and working conditions with their coworkers and to state that the Respondent cannot do anything to interfere with those rights. However, the Board's standard notice language already affirms, at the very beginning of the notice, employees' right to act together with other employees for their benefit and protection. Moreover, because of the unexcepted-to finding that the Respondent unlawfully threatened employees, the notice here provides that the Respondent will not threaten employees with discharge for discussing their wages with their coworkers. We believe this language adequately informs employees of their rights under the Act.

<sup>3</sup> We shall modify the judge's recommended Order and substitute a new notice to conform to the judge's findings and to the Board's standard remedial language.

WE WILL NOT threaten to fire you because you discussed wages with coworkers or engaged in other protected concerted activities.

WE WILL NOT fire you or otherwise discriminate against you because you discussed wages with coworkers or engaged in other protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, within 14 days from the date of the Board's Order, offer Tony McGinty and Eric Bracewell full reinstatement to their former jobs or, if such jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make McGinty and Bracewell whole for any loss of earnings and other benefits resulting from their discharges, less any net interim earnings, plus interest, and WE WILL also make them whole for reasonable search-for-work and interim employment expenses, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharges of McGinty and Bracewell, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that their discharges will not be used against them in any way.

WE WILL compensate McGinty and Bracewell for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for Region 15, within 21 days of the date the amount of backpay is fixed, either by agreement or Board Order, a report allocating the backpay awards to the appropriate calendar years for each employee.

STRONGSTEEL OF ALABAMA, LLC

The Board's decision can be found at [www.nlrb.gov/case/15-CA-189655](http://www.nlrb.gov/case/15-CA-189655) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



*Matthew J. Dougherty, Esq.*, for the General Counsel.  
*Anthony Attalla, Owner and President*, for the Respondent.

## DECISION

### STATEMENT OF THE CASE

ROBERT A. RINGLER, Administrative Law Judge. This case was tried in Daleville, Alabama, on March 27, 2018.<sup>1</sup> The complaint alleged that Strongsteel of Alabama, LLC (Strongsteel or the Respondent) violated §8(a)(1) of the National Labor Relations Act (the Act) by maintaining an invalid workplace rule, interrogating and threatening workers, and firing Eric Bracewell and Tony McGinty for discussing their wages. On the entire record, including my observation of the witnesses' demeanors and consideration of briefs, I make the following

### FINDINGS OF FACT<sup>2</sup>

#### I. JURISDICTION

Annually, Strongsteel, a corporation with an office and place of business in Andalusia, Alabama (the plant), manufactures steel framing for commercial and residential structures, and sells and ships from the plant goods exceeding \$50,000 directly outside of Alabama. It, thus, admitted in its answer, and I find, that, at all relevant times, it was an employer engaged in commerce, within the meaning of §2(2), (6), and (7) of the Act.

#### II. ALLEGED UNFAIR LABOR PRACTICES

##### A. Introduction

This case primarily involves McGinty's and Bracewell's August 4, 2016 firings.<sup>3</sup> It also involves threat and interrogation allegations, and the validity of an Employee Conduct rule.

##### B. Employee Conduct Rule

The contested Employee Conduct rule provides that:

All employees are expected to conduct themselves in a respectful manner .... that [does not] cause ... a distraction or a decrease in work production on the shop floor during working hours.... [Violators] may be subject to termination ....

(GC Exh. 5.)

##### C. August 3—Wage Discussion Involving McGinty and Bracewell

On this date, McGinty and Bracewell met in passing at the

<sup>1</sup> On July 24, 2017 (i.e., the original hearing date in this matter), the parties entered into a settlement agreement, which was approved under *Independent Stave Co.*, 287 NLRB 740 (1987). See (Tr. 1–12; ALJ Exh. 1). Strongsteel later reneged on the settlement, which resulted in it being set aside, and the case being rescheduled for trial.

<sup>2</sup> Unless otherwise stated, factual findings arise from joint exhibits, stipulations, and undisputed evidence.

<sup>3</sup> All dates are in 2016, unless otherwise stated.

plant, and compared pay rates. Thereafter, McGinty revealed their wages to Donnell Ellison, a coworker, who, in turn, reported his wage revelation to Eric Moody, another coworker. The wage news at issue traveled as quickly it did, and stung to an extent, because Ellison and Moody, who were skilled workers, learned for the first time that they were making less than McGinty and Bracewell, who were only entry-level laborers and helpers. They felt betrayed by this situation and proceeded to complain about this pay disparity to Strongsteel's president and owner Anthony Attalla, who replied that, "he would take care of it," and expressed disappointment. (Tr. 37–38.) Ellison fully corroborated Moody's account. He also recalled Attalla apologizing, and saying at a later date that he had "gotten rid of all of the troublemakers."<sup>4</sup> (Tr. 53.) Moody and Ellison both expressed dismay at the hearing that McGinty and Bracewell were labeled "troublemakers," and credibly insisted that they discussed wages in a peaceful and non-threatening manner, without any obvious intention to incite turmoil or cause trouble at the plant.

#### *D. August 4—Discharges of McGinty and Bracewell*

##### *1. GC's Position*

On this date, Bracewell and McGinty were summoned to an initial meeting with supervisors Michael Hall and Jonathan Brooks, where they were pointedly asked whether they had discussed wages at the plant. Bracewell recalled Hall exclaiming that they started a "shit storm."<sup>5</sup> (Tr. 80–81.) They were also told that Attalla would evaluate the matter and decide whether they would be fired later that day for causing a wage commotion.

A few hours later, Bracewell and McGinty were called to a second meeting with supervisors Hall and Brooks. At that time, they were fired for discussing wages at the plant. See, e.g., (Tr. 83 (Bracewell testimony); Tr. 102 (McGinty testimony)). They were also told that Attalla made the final decision, and received identical discharge letters citing a, "violation of [the] employee conduct policy." (GC Exhs. 3–4.) Neither employee had received any prior disciplinary action before their discharges. Bracewell's personnel file ironically had a handwritten notation, which stated, "great guy—great attendance!!!" (GC Exh. 4.)

##### *2. Strongsteel's Reply*

Attalla testified that McGinty was fired for theft and mental health issues. Regarding his mental fitness allegation, he claimed that McGinty often mumbled to himself, and that he grew worried about this behavior. Regarding his theft allegation, he averred that new tools were found in the dumpster, and that McGinty was the only person with such access. He said that he suspected that McGinty intended to carry out a theft by later retrieving the discarded tools from the dumpster and removing the

items from the plant's grounds. Concerning Bracewell, he said that he was fired because he was a poor worker, who exaggerated his qualifications during his interview. He insisted that he had already decided to fire McGinty and Bracewell before learning about their wage discussion, which he adamantly insisted had no bearing on his termination decisions. (Tr. 152–155.)

William McMillion, former vice president of sales and marketing at Strongsteel, recalled the firings at issue. He loosely contradicted Attalla and claimed that McGinty and Bracewell were fired for causing a disturbance at the plant connected to their wage discussion. He conceded, however, that his contention was based exclusively upon hearsay.

#### *3. Credibility Analysis<sup>6</sup>*

Because McGinty and Bracewell testified that they were told that they were fired for discussing wages, and Attalla stated they were fired for theft, mental instability and poor performance, a credibility determination must be made. For several reasons, Attalla has not been credited. His claim that McGinty was fired for theft is incredible, given the conspicuous absence of a corroborating arrest, conviction or police report. This claim is further contradicted by McGinty's termination letter, which solely cites a violation of the *Employee Conduct* policy (i.e., disrespectful conduct), and conspicuously makes no mention of theft.<sup>7</sup> Attalla's claim that McGinty was fired for mental instability is equally unavailing, given that his termination letter similarly omits this rationale. (GC Exh. 3.) This claim is also undercut by my direct observation of McGinty at the hearing, who appeared to be a stable and non-threatening person.<sup>8</sup> Attalla's claim that Bracewell was fired because he was a poor worker is contradicted by the handwritten note in his personnel file describing him as a "great guy—great attendance," and the omission of this rationale in his termination letter. (GC Exh. 4.) Attalla's contentions regarding McGinty and Bracewell were also contradicted by the sworn affidavits of his former supervisors Hall and Brooks, which stated that they were fired for causing a wage-related disturbance at the plant.<sup>9</sup> (GC Exhs. 6–7.) Attalla's claims regarding McGinty and Bracewell were also rendered implausible by the absence of any corroborating evidence of theft, mental instability or poor performance contained in their personnel files. Moody and Ellison credibly corroborated that McGinty and Bracewell were fired for their wage discussion, when they testified that Attalla, in reference to the wage discussions, said "he would take care of it," expressed disappointment regarding the behavior of McGinty and Bracewell, and later stated that he had "gotten rid of all of the troublemakers." Finally, regarding demeanor, Attalla appeared willing to say anything that seemed exculpatory at the moment, as opposed to offering a candid account. McGinty and Bracewell, on the other hand, appeared to

<sup>4</sup> Moody and Ellison were cooperative and consistent witnesses, with stellar demeanors. Their accounts were also generally unrebutted by Attalla. They have, as a result, been fully credited on all points.

<sup>5</sup> Moody and Ellison both denied that McGinty or Bracewell harassed anyone, or otherwise acted improperly, when discussing their wages at the plant; they described both as good employees.

<sup>6</sup> McMillion's testimony has been afforded no weight. His account was not based upon his personal observation of the relevant events and was exclusively derived from hearsay.

<sup>7</sup> Or put another way, if McGinty were actually fired for theft, his discharge letter would have clearly stated so.

<sup>8</sup> This finding was also supported by Ellison's and Moody's credible accounts that McGinty was docile.

<sup>9</sup> Brooks and Hall, who were subpoenaed by the GC to testify as adverse witnesses, did not appear. See (GC Exh. 8) (showing service of process). Their sworn affidavits, which were relevant, self-authenticating (see FRE 902), and non-hearsay admissions (see FRE 801(d)(2)) were, accordingly, admitted at the hearing. (GC Exhs. 6–7.)

be unrehearsed, cooperative, consistent and candid. In sum, I find that Attalla's claims that McGinty was fired for theft and mental instability, and that Bracewell was fired for poor performance, were invalid. I further find that they were fired for discussing their wages with their coworkers in a valid, peaceful and non-disruptive manner.

### III. ANALYSIS

#### A. Employee Conduct Rule<sup>10</sup>

The *Employee Conduct* rule is lawful. The following analytic framework is applicable:

[W]hen evaluating a facially neutral ... handbook provision that, when reasonably interpreted, would potentially interfere with the exercise of NLRA rights, the Board will evaluate two things: (i) the nature and extent of the potential impact on NLRA rights, and (ii) legitimate justifications associated with the rule. We emphasize that *the Board* will conduct this evaluation, consistent with the Board's "duty to strike the *proper balance* between ... asserted business justifications and the invasion of employee rights in light of the Act and its policy," ... focusing on the perspective of employees, which is consistent with Section 8(a)(1)... As the result of this balancing, ... the Board will delineate three categories of ... handbook provisions (hereinafter referred to as "rules"):

- **Category 1 will include rules that the Board designates as lawful to maintain**, either because (i) the rule, when reasonably interpreted, does not prohibit or interfere with the exercise of NLRA rights; or (ii) the potential adverse impact on protected rights is outweighed by justifications associated with the rule. **Examples of Category 1 rules are ... the "harmonious interactions and relationships" rule that was at issue in William Beaumont Hospital, and other rules requiring employees to abide by basic standards of civility...**
- **Category 2 will include rules that warrant individualized scrutiny in each case as to whether the rule would prohibit or interfere with NLRA rights, and if so, whether any adverse impact on NLRA-protected conduct is outweighed by legitimate justifications.**
- **Category 3 will include rules that the Board will designate as unlawful to maintain because they would prohibit or limit NLRA-protected conduct, and the adverse impact on NLRA rights is not outweighed by justifications associated with the rule. An example of a Category 3 rule would be a rule that prohibits employees from discussing wages or benefits with one another.**

*The Boeing Co.*, 365 NLRB No. 164, slip op. at 3-4 (2017) (emphasis added).

The *Employee Conduct* rule is lawful. The Board has held that, "rules requiring employees to abide by basic standards of

civility" are generally lawful under *Boeing* Category 1. See *Boeing*, 365 NLRB No. 164, slip op. at 4. As a result, the instant rule, which requires employees "to conduct themselves in a respectful manner" is a valid and lawful civility standard.

#### B. Interrogation<sup>11</sup>

Strongsteel violated §8(a)(1), when, on August 4, supervisors Hall and Brooks asked McGinty and Bracewell whether they discussed wages at the plant. In *Westwood Healthcare Center*, 330 NLRB 935 (2000), the Board held that these factors determine whether an exchange constitutes an unlawful interrogation:

- (1) The background, i.e. is there a history of employer hostility and discrimination?
- (2) The nature of the information sought, e.g., did the interrogator appear to be seeking information on which to base taking action against individual employees?
- (3) The identity of the questioner, i.e. how high was he in the company hierarchy?
- (4) Place and method of interrogation, e.g. was employee called from work to the boss's office? Was there an atmosphere of unnatural formality?
- (5) Truthfulness of the reply.

Id. at 939. In applying these factors, however, the Board concluded that:

In the final analysis, our task is to determine whether under all the circumstances the questioning at issue would reasonably tend to coerce the employee at whom it is directed so that he or she would feel restrained from exercising rights protected by Section 7 of the Act.

Id. at page 940.

The exchange at issue was an unlawful interrogation. These factors support this finding: the questioning involved a protected activity (i.e., employee wage discussions);<sup>12</sup> Hall and Brooks, the questioners, were direct supervisors at a small plant, who appeared to rank only below the owner; the questioning preceded disciplinary action; and the questioning was formal, inasmuch as the employees were called away from the shop floor into a private disciplinary meeting. Under these circumstances, the questioning was highly coercive, and rose to the level of an unlawful interrogation.

#### C. Threats Regarding Wage Discussions<sup>13</sup>

Strongsteel violated §8(a)(1), when, on August 4, supervisors Hall and Brooks told McGinty and Bracewell that they were being fired for discussing wages. It is unlawful for employers to admonish employees for discussing wages in the workplace. *Alternative Energy Applications, Inc.*, 361 NLRB 1203, 1203 (2014). This admonition, therefore, violated the Act.

#### D. Oral Promulgation of Rule Banning Wage Discussions<sup>14</sup>

Strongsteel did not promulgate a rule, when Hall and Brooks

<sup>10</sup> This allegation is listed under complaint pars. 7 and 10.

<sup>11</sup> These allegations are listed under complaint pars. 8(a) and (b), and 10.

<sup>12</sup> See, e.g., *Waco, Inc.*, 273 NLRB 746, 747-748 (1984) (wage discussions are inherently protected activity).

<sup>13</sup> These allegations are listed under complaint pars. 8(c) and (d), and 10.

<sup>14</sup> These allegations are listed under complaint pars. 8(e) and 10.

told McGinty and Bracewell that they were being fired for discussing wages. Given that both employees were separated from the workforce, there was no rule to enforce after their releases. The statement at issue was isolated to the separated workers, which is distinct from the promulgation of a rule with the ongoing intention to apply it to the extant work force. This allegation must, as a result, be dismissed. See, e.g., *Natural Life d/b/a Heart and Weight Institute*, 366 NLRB No. 53, slip op. at 1, 11 (2018).

#### E. Discharges<sup>15</sup>

Strongsteel violated §8(a)(1), when, on August 4, it fired McGinty and Bracewell for discussing wages. In determining whether an employee's firing is unlawful, the Board applies the mixed motive analysis set forth in *Wright Line*, 251 NLRB 1083 (1980), enfd. on other grounds 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983). Under *Wright Line*, the GC must demonstrate by a preponderance of the evidence that the employee's protected conduct was a motivating factor in an employer's adverse action. The GC satisfies his initial burden by showing: (1) the employee's protected activity; (2) the employer's knowledge of that activity; and (3) animus. If the General Counsel meets his initial burden, the burden shifts to the employer to prove that it would have taken the adverse action, even absent the employee's protected activity. See, e.g., *Mesker Door*, 357 NLRB 591, 592 (2011). The employer cannot meet its burden merely by showing that it had a legitimate reason for its action; rather, it must demonstrate that it would have taken the same action in the absence of the protected conduct. *Bruce Packing Co.*, 357 NLRB 1084, 1086–1087 (2011); *Roure Bertrand Dupont, Inc.*, 271 NLRB 443, 443 (1984). If the employer's proffered reasons are pretextual, i.e., either false or not actually relied on, it fails by definition to show that it would have taken the same action for those reasons regardless of the protected conduct. *Metropolitan Transportation Services*, 351 NLRB 657, 659 (2007); *Golden State Foods Corp.*, 340 NLRB 382, 385 (2003).

#### 1. Prima Facie Case<sup>16</sup>

The GC adduced a strong prima facie showing that Strongsteel fired McGinty and Bracewell for discussing wages. It is well-established that employees engage in protected activity when they discuss wages with their coworkers. See, e.g., *Alternative Energy Applications, Inc.*, supra. (wage discussions are “inherently concerted,” even if they are not pursued with the “express object of inducing group action.”). It is also clear that Strongsteel was aware of these wage discussions. There is similarly extensive evidence of animus, which most notably includes: McGinty and Bracewell being expressly told that they were fired for discussing their wages; McGinty and Bracewell being

admonished that they had started a “shit storm” by discussing their wages; Attalla stating that he had “gotten rid of all of the troublemakers” after their discharges (Tr. 53); the contemporaneous interrogation and threat violations; and the close timing between the protected activity at issue and resulting discharges.<sup>17</sup> In sum, the GC made a strong showing of discriminatory motivation.

#### 2. Strongsteel Did Not Carry its Rebuttal Burden

Strongsteel wholly failed to carry its rebuttal burden. Given the GC's strong showing of unlawful motivation, Strongsteel's rebuttal burden was substantial. See, e.g., *Eddyleon Chocolate Co.*, 301 NLRB 887, 890 (1991); *Bally's Park Place, Inc. v. NLRB*, 646 F.3d 929, 936 (D.C. Cir. 2011), enfg. *Bally's Atlantic City*, 355 NLRB 1319, 1321 (2010). In this case, Strongsteel's proffered reasons for firing McGinty and Bracewell were, as noted, pretextual. Attalla's claims that they were fired for theft, mental instability and poor performance were not credited. These pretextual reasons appeared to be based upon a perceived litigation strategy and lacked any basis in reality. As a result, Strongsteel failed, by definition, to meet its rebuttal burden. *Transportation Services*, supra; *Golden State Foods Corp.*, supra. I, therefore, find that the firings of McGinty and Bracewell were unlawful.

#### CONCLUSIONS OF LAW

1. Strongsteel is an employer engaged in commerce within the meaning of §2(2), (6), and (7) of the Act.
2. It violated §8(a)(1) of the Act by:
  - (a) Interrogating employees about their protected concerted activities.
  - (b) Threatening employees that they would be fired because they engaged in protected concerted activities.
  - (c) Firing McGinty and Bracewell because they engaged in protected concerted activities.
3. These unfair labor practices affect commerce within the meaning of §2(6) and (7).

#### REMEDY

Because Strongsteel has engaged in certain unfair labor practices, it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. It must make McGinty and Bracewell whole for any losses of earnings and other benefits. Their make whole remedy shall be computed in accordance with *F.W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), that is compounded daily as set forth in *Kentucky River Medical Center*, 356 NLRB 6 (2010). Under *King Soopers, Inc.*, 364 NLRB No. 93 (2016), it shall also compensate them for search-for-work and interim employment expenses, regardless of whether those expenses exceed their

<sup>15</sup> The discharge allegations are listed under complaint pars. 9(a), (b), (d), and (e), and 10. It is unnecessary, however, to consider the refusal to rehire allegation in the complaint, which is listed under complaint pars. 9(a), (c), (d), and (e), and 10, because the discharge allegations have been sustained, and an additional refusal to rehire finding would not materially affect the remedy. See, e.g., *Natural Life d/b/a Heart and Weight Institute*, supra, 366 NLRB No. 53, slip op. at 1, fn. 1.

<sup>16</sup> At the hearing, the GC contended that Strongsteel's failure to provide any documents in response to its subpoena duces tecum, warranted the imposition of sanctions under *Bannon Mills*, 146 NLRB 611 (1964). (Tr. 19–22.) This request is denied, inasmuch as the GC has not been prejudiced by Strongsteel's failure to respond.

<sup>17</sup> *La Gloria Oil & Gas Co.*, 337 NLRB 1120 (2002), enfd. 71 Fed. Appx. 441 (5th Cir. 2003) (close timing demonstrates animus).

interim earnings.<sup>18</sup> Under *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB 101 (2014), it shall further compensate them for the adverse tax consequences, if any, associated with receiving lump sum backpay awards, and, under *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016), it shall, within 21 days of the date the amount of backpay is fixed either by agreement or Board order, file with the Regional Director for Region 15 a report allocating backpay to the appropriate calendar year for each employee. The Regional Director will assume responsibility for transmission of the report to the Social Security Administration at the appropriate time and in the appropriate manner. Strongsteel shall offer McGinty and Bracewell full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights or privileges previously enjoyed. It shall also expunge from its records any and all references to their discharges.

Strongsteel is also ordered to distribute appropriate remedial notices electronically via email, intranet, internet, or other appropriate electronic means to its employees at the plant, if it normally communicates with such workers electronically, in addition to the physical posting of paper notices on a bulletin board. See *J. Picini Flooring*, 356 NLRB 11 (2010).

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended<sup>19</sup>

#### ORDER

The Respondent, Strongsteel of Alabama, LLC, Andalusia, Alabama, its officers, agents, and representatives, shall

1. Cease and desist from
  - (a) Interrogating employees about their protected concerted activities.
  - (b) Threatening employees with termination because they engage in protected concerted activities.
  - (c) Discharging or otherwise discriminating against employees because they engage in protected concerted activities.
  - (d) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
2. Take the following affirmative action necessary to effectuate the policies of the Act.
  - (a) Within 14 days from the date of the Board's Order, offer McGinty and Bracewell full reinstatement to their former jobs or, if such jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.
  - (b) Make McGinty and Bracewell whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision, compensate them for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director, within 21 days of the date the amount of

backpay is fixed, either by agreement or Board Order, a report allocating the backpay award to the appropriate calendar year.

(c) Within 14 days from the date of the Board's Order, remove from its files any reference to their unlawful discharges, and within 3 days thereafter, notify them in writing that this has been done and that their discharges will not be used against them in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of the Board's Order.

(e) Within 14 days after service by the Region, post at it Andalusia, Alabama plant, copies of the attached notice, marked "Appendix."<sup>20</sup> Copies of the notice, on forms provided by the Regional Director for Region 15, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of such paper notices, notices shall be distributed electronically such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, it shall duplicate and mail, at its own expense, a copy of the notice to all unit employees employed by it at its plant at any time since August 3, 2016.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that it has taken to comply.

IT IS FURTHER ORDERED that the complaint be dismissed insofar as it alleges violations of the Act not specifically found unlawful herein.

Dated Washington, D.C. June 4, 2018

#### APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

<sup>18</sup> Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate set in *New Horizons*, supra, compounded daily under *Kentucky River Medical Center*, supra.

<sup>19</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended

Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

<sup>20</sup> If this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

**FEDERAL LAW GIVES YOU THE RIGHT TO**

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT ask you about your wage discussions with your coworkers, or about other protected concerted activities.

WE WILL NOT threaten to fire you because you discussed wages with coworkers or engaged in other protected concerted activities.

WE WILL NOT fire you or otherwise discriminate against you because you discussed wages with coworkers or engaged in other protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL within 14 days from the date of the Board's Order, offer Tony McGinty and Eric Bracewell full reinstatement to their former jobs or, if such jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make McGinty and Bracewell whole for any loss of earnings and other benefits resulting from their discharges, less any net interim earnings, plus interest, plus reasonable search-for-work and interim employment expenses.

WE WILL, within 14 days from the date of the Board's Order,

remove from our files any reference to the unlawful discharges of McGinty and Bracewell, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that their discharges will not be used against them in any way.

WE WILL compensate McGinty and Bracewell for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director, within 21 days of the date the amount of backpay is fixed, either by agreement or Board Order, a report assigning the backpay awards to the appropriate calendar years for each employee.

STRONGSTEEL OF ALABAMA, LLC

The Administrative Law Judge's decision can be found at [www.nlrb.gov/case/15-CA-189655](http://www.nlrb.gov/case/15-CA-189655) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

